IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.6212 of 2007
Date of decision: 06.12.2007

Bal Kishan.

…Petitioner

Vs.

State of Haryana and others.

…Respondents

CORAM:
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. G.S. Sandhawalia, Advocate
for the petitioner.

Ms. Mamta Singal Talwar, AAG, Haryana.

ADARSH KUMAR GOEL, J.

This petition seeks quashing of order dated 5.9.2001, Annexure P-9 terminating the services of the petitioner and award dated 9.11.2006, Annexure P-17 upholding the same.

Case of the petitioner is that he was appointed as Driver on daily wages in Haryana Roadways on 7.7.1997. His services were regularized on 4.12.1978. On 20.12.1996, he fell sick and did not report for duty. Chargesheet dated 13/31.3.1997 was given to him. On 8.5.1997, he joined service. An Inquiry Officer was appointed who gave report on 19.8.1998, holding misconduct of absence from duty to have been proved. Show cause notice was issued against the petitioner, but he could not receive the same. He again became unwell on 26.12.2000 and did not report for duty. Publication was issued in vernacular paper on

14.4.2001 and 15.4.2001, proposing dismissal from service. He was then dismissed from service. He raised an industrial dispute which was referred for adjudication. The Labour Court upheld the finding of misconduct and the order of punishment.

On 28.5.2007, following order was passed:-

> "Counsel for the petitioner states that when the petitioner stopped coming to the office, he had 8½ months of earned leave to his credit that could have been adjusted against alleged period of absence. Counsel further submits that when service was terminated, the petitioner was to serve only four months before his superannuation. Counsel further says that he confines his arguments only with regard to quantum of punishment. Instead of dismissal from service, the petitioner could have been pre-maturely retired.
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> Notice of motion for 28.8.2007."

In the reply filed, it has not been disputed that from 5.12.1978 to 26.12.1996, the petitioner rendered almost 18 years of service. He became absent, thereafter.

Learned counsel for the petitioner submits that the workman has already died and since he had already rendered 18 years of service, the punishment of dismissal, was excessive and disproportionate to the charge.

Though normally this Court does not interfere with the quantum of penalty under Article 226 of the Constitution if the charges are established, the doctrine of proportionality being a part

of non-arbitrariness, can be invoked where punishment imposed is grossly unjust. Reference may be made to the judgment of the Hon'ble Supreme Court in ***State of U.P. v. Jaikaran Singh*** (2003) 9 SCC 228.

Accordingly, while we uphold the finding of misconduct, we are of the view that punishment of dismissal be converted into punishment of compulsory retirement. The terminal benefits may accordingly be computed and paid to the legal heirs of the petitioner within 3 months from the date of receipt of a copy of this order.

(ADARSH KUMAR GOEL)
JUDGE

December 06, 2007 **(KANWALJIT SINGH AHLUWALIA)**

ashwani **JUDGE**